IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

SA.No. 638 of 1993(A)

AGAINST A.S. NO. 73 OF 1991, DISTRICT COURT, ALAPPUZHA AGAINST O.S. NO. 321 OF 1987, MUNSIFF'S COURT, ALAPPUZHA

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APPELLANTS - APPELLANTS - DEFENDANTS:

1. G. SURESH BABU, S/O. P.K. GANGADHARAN, PUNNASSERIL, ANAPRAMBAEL NORTH, PRESIDENT, SNDP BRANCH NO.24, ANAPRAMBAEL THALAVADY VILLAGE.

2. V.K. RAJAPPAN, S/O. KUTTY, VASHAPURATHU PARAMBU, ANAPRAMBAEL NORTH, SECRETARY, SNDP BRANCH NO.24, ANAPRAMBAEL, THALAVADY NORTH.

BY ADV. SRI.M.V.IBRAHIMKUTTY.
SRI.K.RAVU

RESPONDENTS - RESPONDENT - PLAINTIFF - DEFENDANTS:

1. VARGHESE VARGHESE, PWD CONTRACTOR, NALPATHI ANATHIL VEETTIL, ANAPRAMBAEL VADAKKU MURI, THALAVADY VILLAGE.

2. R. MOHANAN, PRESIDENT, SNDP BRANCH 24, ANAPRAMBAEL VADAKKU MURI, THALAVADY VILLAGE, RESIDING AT PUTHEN PARAMBIL VEETTIL, ANAPRAMBAEAL VADAKKU MURI, THALAVADY VILLAGE.

3. P.V. UTHAMAN, VICE PRESIDENT, DO. DO. RESIDING AT PUNNASSERY VEETTIL, DO. DO.

4. K.G. GOPIRAJAN, SECRETARY, DO.D O. RESIDING AT MANAMTHARA VEETTTIL, DO. DO.

BY ADV. SRI.GIRI.V.

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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S.A. NO. 638 of 1993

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Dated this the 6th day of December, 2006

J U D G M E N T

Defendants 4 and 5 in O.S. No. 321 of 1987 on the file of the Munsiff's Court, Alappuzha are the appellants. Appeal is filed against the decree and judgment passed by District Court, Alappuzha in A.S. No.73 of 1991 confirming the judgment and decree passed by the trial court in the suit.

2. First respondent filed the suit for declaration of easement right and for injunction. It was alleged that plaintiff and his predecessors-in-interest are residing in a house situated in the property comprised in Sy.No.52/12A of Thalavady Village. It was averred that the property which lies on the southern side of plaintiff's property was owned by SNDP Sakha No.24. Further case of plaintiff was that himself and his predecessors-in-interest were walking through a pathway situated in the middle of property owned by the Sakha to reach the Panchayat road situated on southern side of defendants' property. It was averred

that plaintiff and office bearers of defendant Sakha entered into an agreement by which the pathway which was lying in the middle of the property was shifted to western boundary of Sakha's property. According to plaintiff that is the only pathway for ingress and egress to his property and defendants are causing obstructions. Hence suit.

3. It was contended that no portion of the property belonging to Sakha was used as a pathway by plaintiff or his predecessors-in-interest. Averment that plaintiff and his predecessors-in-interest were walking through a pathway situated in the middle of property was denied. It was contended that plaintiff filed a petition before the Sakha seeking permission to walk through the property of the Sakha. It was contended that a sub committee was formed to consider the request of plaintiff and to make a proposal. According to appellants though sub committee made a recommendation that a pathway may be provided to plaintiff, that was not accepted by Sakha. Trial court, after considering pleadings and evidence, found that plaintiff was walking through a pathway situated in the middle of property and subsequently that pathway was shifted to the

western boundary of Sakha's property in pursuance of an agreement and hence plaintiff was entitled to get a declaration of right by easement by prescription. Claim of easement by necessity was disallowed. Trial court also passed a decree of permanent prohibitory injunction restraining appellants from causing obstruction to the use of pathway by plaintiff. Challenging that judgment and decree, appellants filed A.S. No. 73 of 1991 before the District Court, Alappuzha.

4. Lower appellate court re-appreciated evidence and found that plaintiff himself and his predecessors-in-interest were walking through a pathway situated in the middle of property. It was also held that subsequently that pathway was shifted to western boundary of the property by mutual agreement. Both the courts have accepted the evidence of P.Ws.3 and 4. P.W.3 was a member of Sakha. P.Ws.3 and 4 had categorically admitted that plaintiff is using the disputed pathway to reach his property. It has also come out in evidence that plaintiff and his predecessors-in-interest were walking through the pathway situated in the middle of Sakha's property and same caused inconvenience to appellants. A committee

was constituted to enquire into the claim of plaintiff and that committee recommended to Sakha to provide a pathway to plaintiff through the western boundary. Though appellants have subsequently denied that recommendation was not accepted, Exhibit A1 letter relied on by plaintiff establishes that recommendation of sub committee was accepted and pathway was provided on the western boundary of Sakha's property. Both the courts have concurrently found that plaintiff had established a right of way by prescription. Lower appellate court has also relied on the provisions of Section 22 of the Easement Act to confirm the judgment and decree passed by the trial court.

5. Contention raised by appellants is that the property belonging to Sakha was paddy field and for convenient enjoyment of paddy field there are Varambas and ridges and merely because plaintiff and others walked through one of those ridges, he is not entitled to get a decree declaring the right of easement. Appellants relied on the decision reported in **Baby v. Ramasankar Lal** (AIR 1975 Allahabad 467) in support of their case. In this case appellants had no case that properties

were paddy fields and people of the locality used to walk along ridges with permission of owners of paddy fields and it will not confer any right of easement. On the other hand, the specific contention raised was that plaintiff never walked through the property of appellants. So principle laid down in **Baby's case** (supra) can have no application to the facts of this case. No substantial question of law much less a question of law arises for consideration in this appeal. I do not find any reason to interfere with the judgment and decree under appeal and the appeal is only to be dismissed.

In the result, appeal is dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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S.A. NO. 638 OF 1993

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J U D G M E N T

6TH DECEMBER, 2006